

DANIEL WRIGHT.

MARCH 2, 1860.—Laid on the table, and ordered to be printed.

Mr. OLIN, from the Committee on Military Affairs, made the following

REPORT.

*The Committee on Military Affairs, to whom was referred the memorial of Daniel Wright, praying relief on account of the abrogation of his contract for constructing the first section of the United States military road from Astoria to Salem, in the then Territory of Oregon, having had the same under consideration, beg leave to report :*

That on the 16th day of February, 1856, the memorialist entered into a contract, under seal, with Geo. H. Derby, United States topographical engineer, acting on behalf of the United States, to construct one section of a military road from Astoria to Salem, for the consideration of two thousand dollars per measured mile. The contract provided that the section should be finished, ready for inspection, on or before the 1st of September, 1856, and that after the same shall be completed according to contract, the sum of two thousand dollars per measured mile should be paid to the said Wright, in payments to be made monthly upon work received and approved, ten per cent. to be deducted therefrom to secure the completion of the contract, &c.

By the terms of the instrument it was further provided that the contract should be subject to the approval of the Secretary of War, and that in case of his disapproval, any work done by the contractor should be paid for at the rates provided in the contract.

The memorialist alleges that he entered upon the prosecution of the work, and on the 10th of May, 1856, had completed one and eleven one hundred and sixtieths ( $1\frac{11}{160}$ ) mile, when he was notified that the Secretary of War had disapproved and annulled the contract; that the road was immediately measured and inspected, and Lieutenant Derby offered to pay the contractor the contract price—that is, at the rate of two thousand dollars per mile for the length of road constructed, and to purchase of him such of the remaining tools and provisions, at cost price, as Lieutenant Derby judged the government might require in the further prosecution of the work; that the contractor reluctantly accepted the offer as the best terms he could obtain. He further states that at the time he entered into the contract, he “supposed, if he was not actually led to believe,” that the provision authorizing the Secre-

tary of War to disapprove, and thereby terminate the contract, was a mere form required by law making the appropriation, and that there was no doubt whatever the contract would be approved.

It is stated by the memorialist, and confirmed by the letter of Lieutenant Derby, that the portion of the section of the road finished before the termination of the contract, was more expensive to build than any of the remaining portions, some of which cost the government over two thousand five hundred dollars per mile.

The principal question in this case, therefore, is, whether a party who voluntarily enters into a contract with a subordinate officer of one of the departments of government, containing a provision that the contract should be subject to the approval of the head of the department, and such approval is withheld, should be compensated by the general government for any loss or damage he may have sustained by reason of the refusal of the department to approve such contract.

Such a principle, it seems to your committee, cannot be adopted. It would call for a revision of every contract entered into with the government, where no breach of it was even complained of, but simply upon the ground that the contract had not turned out a profitable undertaking, or even as profitable as was anticipated.

The committee are also of the opinion that Lieutenant Derby placed the true legal construction upon the contract in refusing to pay the contractor anything beyond the rate of two thousand dollars per mile for the length of road built, and that the whole case as presented, affords no just or legal grounds for the relief sought.

*Resolved*, That the committee be discharged from the further consideration of the subject.